

## Message Text

PAGE 01 STATE 138606

44

ORIGIN EB-07

INFO OCT-01 CIAE-00 COME-00 DODE-00 DOTE-00 FMC-01 INR-07

NSAE-00 CG-00 OFA-01 DLOS-04 ISO-00 ARA-06 L-03 SP-02

AID-05 IGA-01 /038 R

66604

DRAFTED BY EB/TT/MA:JPSTEINMETZ:EW

APPROVED BY EB/TT/MA:RKBANK

COM/IEPR:EANTOUN

DOT:PLARSEN (SUBS)

ARA/CAR:DASTRASSER

ARA/ECP:SFOUTS

MARAD:RBOURDON

FMC:WJSMITH

L/EB:FWILLIS(INFO)

----- 034993

P 131739Z JUN 75

FM SECSTATE WASHDC

TO AMEMBASSY SANTO DOMINGO PRIORITY

LIMITED OFFICIAL USE STATE 138606

E.O. 11652: N/A

TAGS: EWWT, DR, US

SUBJECT: SHIPPING; REPRESENTATIONS ON DR MARITIME  
LEGISLATION

REF: A) SANTO DOMINGO 2525; B) STATE 131108;

C) SANTO DOMINGO A-11 OF 2/6/75

1. RE NEW MARITIME LEGISLATION, DEPARTMENT UNDERSTANDS  
LOCAL AND FOREIGN (INCLUDING US) MARITIME INTERESTS  
LOBXIED FOR MODIFICATION OF DRAFT BILL, BUT WERE UNSUCCESS-  
FUL IN OBTAINING DESIRED CHANGES. DRAFT SENT REPAIR C  
CONTAINED SEVERAL PROVISIONS (ARTICLES 4, 5, & 7--NOT  
ARTICLE 6 AS INDICATED IN REFTEL B) WHICH PRESENT PROBLEMS  
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PAGE 02 STATE 138606

FROM STANDPOINT OF U.S. SHIPPING LAWS AND MARITIME POLICY.  
SINCE DR LEGISLATION WILL BE EFFECTED UPON PUBLICATION IN  
OFFICIAL GAZETTE AND SINCE EMBASSY REPORTS REVISIONS OF  
ABOVE ARTICLES DO NOT APPEAR TO BE SIGNIFICANT FROM DRAFT,

WE FORESEE POSSIBILITY OF CONFLICT AND JURISDICTIONAL DISPUTE SHOULD DR ATTEMPT TO IMPLEMENT LEGISLATION IN U.S. TRADES. EMBASSY ACCORDINGLY REQUESTED TO RAISE MATTER AND EXPRESS USG CONCERN TO SECRETARY OF INDUSTRY AND COMMERCE D'ALLESANDRO OR SENIOR DEPUTY RESPONSIBLE FOR SHIPPING MATTERS."

2. OY SEPTTEL, DEPARTMENT IS TRANSMITTING STATEMENT OF US MARITIME POLICY SETTING FORTH FRAMEWORK WITHIN WHICH USG IS PURSUING ITS MARITIME GOALS. EMBASSY REQUESTED TO REVIEW CONTENTS AS WELL AS PROVIDE COPY(IES) THEREOF TO LOCAL AUTHORITIES. ORAL REPRESENTATION SHOULD BE DRAWN THEREFROM AS APPROPRIATE AND ADDITIONAL POINTS TO BE STRESSED ARE THAT:

A) ARRANGEMENTS AND CONDITIONS FOR TRANSPORTING OUR RESPECTIVE FOREIGN TRADE ARE OF EQUAL CONCERN TO USG AND WE WOULD FIND UNILATERAL IMPOSITION OF SHIPPING REGIME COVERING OUR TRADE AS ONEROUS AS ONE IMPOSED BY THE U.S. WOULD BE ON THE D.R.;

B) USG CONSIDERS CERTAIN PROVISIONS OF DR MARITIME LEGISLATION TO BE DISCRIMINATORY AND THEREFORE DETRIMENTAL TO US TRADE AND SHIPPING INTERESTS;

C) DR EFFORTS TO IMPLEMENT LEGISLATION IN US TRADES COULD LEAD TO UNDESIRABLE CONFRONTATION WHICH COULD UNNECESSARILY HARM OUR COMMERCIAL RELATIONS.

3. PARTS OF LAW, BASED ON AVAILABLE DRAFT, WHICH ARE OF MAJOR CONCERN AND WHERE PROBLEMS MAY ARISE ARE:

A) URICLE 4 WHICH MANDATES COMPREHENSIVE CARGO PREFERENCE SCHEME, INCLUDING COMMERCIAL CARGOES, IS AT ODDS WITH US POLICY PARAS. 3 & 4 SEPTTEL. LACK OF PROVISION IN DRAFT FOR EQUAL ACCESS TO GOVERNMENT-CONTROLLED CARGOES (SEE PARAS 4 & 5 SEPTTEL AND DISCUSSION BELOW, LIMITED OFFICIAL USE  
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PAGE 03 STATE 138606

RESPECTIVELY) BY FLAG LINES OF TRADING PARTNER WOULD APPEAR TO PRECLUDE POSSIBILITY OF RESOLVING CONFLICT WITH US POLICY RESPECTING OUR GOVERNMENT-IMPELLED CARGOES.

B) ARTICLE 5 MANDATES 40/40/20 CARGO SHARING SCHEME IN DOMINICAN TRADES, THEREBY PROVIDING 40 PER CENT FOR LINES OF TRADING PARTNER, WITH TWIST THAT IF THEY (THE LINES OF TRADING PARTNER) UNABLE TO TRANSPORT THEIR PERCENTAGE, SHARE REVERTS TO DR OPERATORS. 40-40-20 FORMULA APPARENTLY TAKEN FROM UN CONVENTION ON CODE OF CONDUCT FOR LINER CONFERENCES WHICH USG OPPOSES FOR REASONS SET FORTH IN STATE A-5007 OF JUNE 19, 1974,

WITH TWIST OF REVERSION OF PARTNER'S 40 PER CENT PURELY DOMINICAN. UNILATERAL IMPOSITION OF CARGO SHARING PROVISIONS COULD RESULT IN APPLICATION OF COUNTERVAILING MEASURES PURSUANT TO SECTION 19, MERCHANT MARINA ACT, 1920, INCLUDING ANY INSTANCE IN U.S. TRADES WHERE NO US CARRIERS OFFERING SERVICE AND DR MIGHT ATTEMPT TO MONOPOLIZE 80 PER CENT OF CARGO MOVEMENTS TO DETRIMENT OF THIRD FLAG CARRIERS AND OUR TRADE INTERESTS.

C) ARTICLE 7 IS UNCLEAR AS TO EXACT INTENT, I.E. WHETHER VESSELS WILL BE CHARTERED OR OTHER TYPE OF ARRANGEMENT WILL BE AUTHORIZED. IN LATTER CASE SHOULD ROYALTY TYPE OF AGREEMENT WITH US OR THIRD FLAG LINE IN OUR TRADE BE INVOLVED, I.S. WHERE CERTAIN PERCENTAGE OF FREIGHT REVENUES WOULD BE PAID TO DR OPERATOR IN RETURN FOR MONOPOLY RIGHT TO CARGO RESERVED TO DR OPERATORS, SUCH WOULD BE ILLEGAL UNDER US LEGISLATION. MOREOVER, SHOULD PROVISION BE USED IN CONJUNCTION WITH CARGO RESERVATION MEASUREI TO PRESSURE US OR OTHER CARRIERS IN OUR TRADE INTO SPACE CHARTER OR OTHER TYPE OF AGREEMENT AGAINST THEIR WILL, THIS WOULD BE CAUSE FOR CONCERN AND ALSO RAISE SPECTER OF POSSIBLE US RETALIATION.

4. BEGIN FYI. THE USG CONSIDERS THAT ITS GOVERNMENT-CONTROLLED CARGOES, UNDER OUR CARGO PREFERENCE LAWS, ARE ONLY THOSE WHICH ARE GOVERNMENT-OWNED" FINANCED, OR IMPELLED, AND WHICH IT CAN BE REASONABLY ARGUED WOULD NOT MOVE EXCEPT FOR GOVERNMENT SUPPORT AND OVER WHICH THEREFORE THE GOVERNMENT CAN BE EXPECTED TO HAVE LIMITED OFFICIAL USE  
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PAGE 04 STATE 138606

CERTAIN RIGHTS AS A SHIPPER AND ON THE ROUTING (CHOICE OF VESSELS) THEREOF. US LAW REQUIRES AT LEAST 50 PER CENT OF SOME (AID CARGOES UNDER PL 664 AND CERTAIN PL 480 CARGOES) AND 100 PER CENT (EXIMBANK FINANCED CARGOES UNDER PR-17) OF OTHER USG SPONSORED CARGOES TO MOVE ON US FLAG VESSELS. IN THE CASE OF EXIMBANK CARGOES, A WAIVER OF UP TO 50 PER CENT MAY BE GRANTED BY THE MARITIME ADMINISTRATION AT THE REQUEST OF THE RECIPIENT COUNTRY FOR CARRIAGE ON ITS FLAG RPT FLAG VESSELS, PROVIDED US FLAG VESSELS RECEIVE RECIPROCAL TREATMENT. BY CONTRAST MANY GOVERNMENTS, PARTICULARLY IN LATIN AMERICA, HAVE EXTENDED THE CONCEPT OF GOVERNMENT-CONTROLLED CARGOES WELL BEYOND THE US DEFINITION AND HAVE SIMPLY DESIGNATED A CERTAIN PERCENTAGE OF COMMERCIAL CARGOES, OVER WHICH THERE MAY BE NO DIRECT GOVERNMENT INTEREST OR INVOLVEMENT, AS RESERVED FOR NATIONAL FLAG VESSELS.

5. WHILE NOT ENDORSING ANY CONCEPT OF CARGO PREFERENCE WHICH AXTEENDS TO WHAT WE CONSIDER COMMERCIAL CARGOES,

THE US HAS IN PROTECTION OF ITS CARRIERS ADVERSELY  
AFFECTED BY LA RESERVATION OF WHAT LAS HAVE DESIGNATED  
AS GOVERNMENT-CONTROLLED CARGOES TO THEIR OWN LINES,  
INSISTED IN DIPLOMATIC AND COMMERCIAL NEGOTIATIONS  
WITH FOREIGN GOVERNMENTS AND CARRIERS, RESPECTIVELY,  
THAT OUR CARRIERS HAVE "EQUAL ACCESS" TO SUCH GOVERNMENT-  
CONTROLLED CARGOES. WE IN TURN HAVE ATTEMPTED, WHERE  
APPROPRIATE, TO PROVIDE EQUAL ACCESS TO USG-CONTROLLED  
CARGOES TO THEIR NATIONAL FLAG CARRIERS ON A RECIPROCAL  
BASIS. LATTER POINT IS IMPORTANT IN DR CONTEXT SINCE  
RECIPROCITY WOULD NOT EXTEND TO ANY FOREIGN FLAG  
VESSELS WHICH MIGHT BE CHARTERED, OR HAVE AGREEMENTS  
WITH DR OPERATORS. END KYI.

6. THOUGH WE HAVE NO SPECIFIC SUGGESTIONS ON HOW TEXT  
OF MARITIME LEGISLATION MIGHT BE ALTERED TO ACCOMMODATE  
MAJOR US CONCERNS, WE HOPE THAT TIMELY PRESENTATION OK  
THESE MIGHT DELAY PUBLICATION IN THE OFFICIAL GAZETTE  
AND CAUSE GODR TO CONSIDER SOME REVISIONS. THOUGH  
SIMILAR REPRESENTATIONS TO OTHER LATIN AMERICAN STATES  
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PAGE 05 STATE 138606

HAVE NOT BEEN PARTICULARLY SUCCESSFUL, AS A MINIMUM,  
WE WOULD LIKE TO HAVE GONE ON RECORD AS HAVING EXPRESSED  
AT THIS TIME OUR RESERVATIONS CONCERNING THE LEGISLATION.

7. NOTE: RE DISCUSSION PARAS 7-10 SEPTTEL, FMC  
GENERAL ORDER 33 IMPLEMENTING SECTION 19, MERCHANT  
MARINE ACT, 1920 (SEE STATE A-8430 OF NOVEMBER 8, 1974)  
WAS NOT EFFECTED TO ALLOW AJDITIONAL COMMENT AND CON-  
SIDERATION BY INTERESTED PARTIES. THIS FACT, HOWEVER,  
DOAS NOT PRECLUDE FMC FROM INVOKING SECTION 19 MEASURES  
(SEE STATE 243654 OF NOVEMBER 5, 1974 FOR ADDITIONAL  
BACKGROUND). KISSINGER

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## Message Attributes

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